

EXHIBIT 2

Hon. Tiffany M. Cartwright

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOANN LEDOUX, a single woman.

Plaintiffs,

v.

OUTLIERS, INC. (d/b/a THESIS,
THESIS NOOTROPICS, FIND MY
FORMULA, and FORMULA), a
Delaware Corporation; DANIEL FREED,
individually; MATT RUBIN,
individually; BRAND
NUTRACEUTICALS, INC. (d/b/a
BRAND NUTRA), a New York
Corporation; BRAND PACKAGING
GROUP, INC. (d/b/a BRAND
NUTRACEUTICALS), a New York
Corporation; and John and Jane Does 1-5.
Defendants.

Defendants.

No. 3:24-cv-05808-TMC

AFFIDAVIT OF DANIEL FREED

TO: CLERK OF COURT

AND TO: PLAINTIFF AND HER COUNSEL OF RECORD

STATE OF NEW YORK
COUNTY OF NEW YORK

1 BEFORE ME, personally appeared DANIEL FREED, who after first being duly
2 sworn, deposes and says:

3 1. That affiant is over eighteen years of age, a resident of the State of New
4 York and otherwise sui juris.

5 2. That all of the facts attested hereto are based upon personal knowledge,
6 not information or belief, unless stated otherwise.

7 3. That affiant is competent to testify to the matters (facts) herein in his
8 capacity as the Chief Executive Officer and Co-Founder of Outliers, Inc. (THESIS,
9 THESIS NOOTROPICS, FIND MY FORMULA, and FORMULA), a Delaware Corporation
10 identified as a named Defendant in the above entitled action, filed in the U.S. District Court,
11 Western District of Washington by JOANN LEDOUX, a single woman and affiant reviewed
12 the entire complaint with exhibits, and offers this affidavit based upon her personal
13 knowledge of:
14

15 a. JOANN LEDOUX'S ordering history, address, transactional emails
16 with the Defendant, OUTLIERS, INC., to include JOANN LEDOUX'S on-boarding process
17 with Find My Formula, n/k/a OUTLIERS, INC., d/b/a Thesis in March, 2021 (Shopify
18 records), CartHook checkout records and checkout process, upon which MS. LEDOUX
19 placing on March 18, 2021 her order to produce the products identified in the complaint;
20

21 b. On the CartHook checkout there was a checkbox conspicuously placed
22 directly above the checkout button that stated something to the effect of "I have read and
23 agree to the Terms and Conditions and Medical Disclaimer." Both the Terms and Conditions
24 and the Medical Disclaimer were linked. It was not possible to purchase the
25
26

1 product if the checkbox was not checked; and

2 c. The consumer, User Terms and Conditions required by any consumer,
3 customer before ordering a product from Find My Formula, n/k/a OUTLIERS, INC., d/b/a
4 Thesis which Terms and Conditions constitutes a binding written agreement between Find
5 My Formula OUTLIERS, INC., d/b/a Thesis and the consumer, customer in this case JOANN
6 LEDOUX. (Attached as Exhibit "A" to this affidavit) is true, genuine and authentic copy of
7 the Terms and Conditions executed by JOANN LEDOUX on or about March 18, 2021 and
8 Medical Disclaimer (attached as Exhibit "B") all upon or near the time of her on boarding
9 process with Find My Formula, n/k/a OUTLIERS, INC., d/b/a Thesis).

10 4. That affiant further asserts the attached Exhibit "A" is kept in the ordinary
11 course of business, by affiant, or the business record custodian, and kept in the file, without
12 alteration of JOANN LEDOUX from March 18, 2021 through present. This Exhibit was
13 made at or near the time MS. LEDOUX contracted with Find My Formula, n/k/a OUTLIERS,
14 INC., d/b/a Thesis on March 18, 2021, it was the regular practice of Find My Formula, n/k/a
15 OUTLIERS, INC., d/b/a Thesis to record the information set forth in the attached Exhibits
16 "A", "B" and "C", affiant is familiar with the records and the circumstances under which they
17 were made and the record(s) have been kept in a safe place, without alternation, to wit: in the
18 JOANN LEDOUX customer, consumer file through present.

19 5. That affiant asserts page 6 of the "Terms and Conditions" states:

20 "DISPUTE RESOLUTION AND CHOICE OF LAW"

21 "Any controversy or claim arising out of or relating to this contract, or the
22 breach thereof, shall be settled by binding arbitration administered by the
23 American Arbitration Association in accordance with its Commercial
24
25
26

1 Arbitration Rules. The arbitration hearing shall take place in the Southern
 2 District of New York, before a single arbitrator. Judgment on the award
 3 rendered by the arbitrator may be entered in any court having jurisdiction
 thereof.

4 Further, you agree that any issue or dispute arising out of or in connection
 5 with your use of our site, intellectual property, the Terms, or any matter
 6 concerning Company shall be governed by the laws of the United States and
 7 the State of New York with venue in the Southern District of New York. If
 8 any provision of the Terms is found to be invalid by any court having
 9 competent jurisdiction, the invalidity of such provision shall not affect the
 validity of the remaining provisions of the Terms, which shall remain in full
 force and effect.

10 By using the site, you agree to comply with all applicable laws and regulations
 11 of the United States. The material provided on the site is protected by law
 12 including, but not limited to, United States copyright and trademark law and
 13 international treaties. Company makes no representation that materials
 14 contained in the site are appropriate or available for use in other locations and
 15 access to them from territories where their contents are illegal is prohibited.
 Those who choose to access the Services or site from other locations outside
 the United States do so at their own initiative and are responsible for
 compliance with applicable Local laws.”

16
 17 6. Affiant further notes on page 1 states:

18 “ACCEPTANCE OF TERMS AND CONDITIONS”

19 “By making any use of our Websites (“Website” or “sites”), Services, and any
 20 purchase from us, you expressly agree to the terms contained herein.

21 You consent and agree that your use of a keypad, mouse or other device to
 22 select an item, button, icon, checkbox, to enter text, or to perform a similar
 23 act/action, while using our sites, for the purpose of accessing or making any
 24 transactions regarding any agreement, acknowledgment, consent, terms,
 25 disclosures or conditions, constitutes your signature, including without
 26 limitation of the United States Electronic Signatures in Global and National
 Commerce Act, P.L. 106-229 (the “E-Sign Act”) acceptance and agreement
 as if actually signed by you in writing. Be advised that all activity and IP

address information may be monitored. The right to use any product or service you purchase from us is personal to you and is not transferable to any other person or entity.”



7. Affiant asserts JOANN LEDOUX agreed to all the Terms and Conditions with Find My Formula, k/n/a OUTLIERS, INC., d/b/a Thesis which represents a binding agreement between Find My Formula, n/k/a OUTLIERS, INC., d/b/a Thesis and its affiliated entities and JOANN LEDOUX, the customer.

8. Affiant attaches as Exhibit “C” another record in the JOANN LEDOUX customer file kept by Find My Formula, n/k/a OUTLIERS, INC., d/b/a Thesis reflecting her order product history with Find My Formula, n/k/a OUTLIERS, INC., d/b/a Thesis.

FURTHER AFFIANT SAYETH NAUGHT


DANIEL FREED

SWORN TO and subscribed before me this 12 day of November, 2024, by DANIEL FREED.


Notary Public

(Print Name)

EDITH C ROJAS
Commission No. 01-RO6200821
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01-RO6200821
Qualified in New York County
Certificate on File in Kings County
Commission Expires February 09, 2025

Personally Known ☒ OR Produced
Identification DL California D2277242
Type of Identification DRIVER LICENSE

DATED: November 13, 2024.

THE LAW OFFICES OF STUART N. KAPLAN, P.A.
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Secondary Email:
rbailey@stuartnkapanpa.com
*Attorneys for Defendants Outliers, Inc.,
Daniel Freed, and Matt Rubin*

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused true and correct copies of the foregoing document to be served upon the following, at the addresses stated below, via the method of service indicated.

LAW OFFICE OF JOCELYN C STEWART, CORP.

Jocelyn C. Stewart
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Tacoma, Washington 98407
jocelyn@ucmj-defender.com

☐ E-mail
☐ U.S. Mail
☒ E-filing

MCTLAW

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☐ U.S. Mail
☒ E-filing

Attorneys for Plaintiff

Dated this 13th day of November, 2024 in Seattle, Washington.

/s/ Rosemary Bailey
Rosemary Bailey
Paralegal

EXHIBIT “A”

Terms and Conditions

CAREFULLY READ THESE TERMS & CONDITIONS BEFORE ORDERING

INTRODUCTION

These Terms and Conditions (“Agreement” or “Terms”) constitute a binding written agreement between OUTLIERS INC., and its affiliated entities (collectively “Company,” “we,” “us,” or “our”) and you (“you” or “Customer”). To make these Terms easier to read, the services offered by the Website are collectively called “Services.”

This Website is operated by the Company. PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS WEBSITE. THESE TERMS OF USE DESCRIBE YOUR LEGAL RIGHTS AND RESPONSIBILITIES, AND BY ACCESSING OR USING THE WEBSITE OR SERVICE, YOU ACCEPT AND AGREE TO BE BOUND AND ABIDE BY THIS AGREEMENT. THESE TERMS FORM A LEGAL AGREEMENT BETWEEN YOU AND US REGARDING YOUR USE OF THE SITE ALONG WITH THE RELATED SERVICES, FEATURES, CONTENT, AND OFFERS PROVIDED ON THE WEBSITE. THESE TERMS ALSO INCLUDE A MANDATORY ARBITRATION CLAUSE. IF YOU ARE NOT WILLING TO BE BOUND BY THESE TERMS, INCLUDING THE DISCLAIMERS, YOU MAY NOT ACCESS OR USE THIS WEBSITE. IF YOU DO NOT UNDERSTAND AND AGREE TO ALL OF THESE TERMS, OR ARE UNDER EIGHTEEN (18) YEARS OF AGE, YOU SHOULD CEASE ALL USE OF OUR SITES AND LOGOFF IMMEDIATELY. Your use of this Website, purchase or use of any of our products constitutes your agreement to these Terms and Conditions.

ACCEPTANCE OF TERMS AND CONDITIONS

By making any use of our Websites (“Website” or “sites”), Services, and any purchase from us, you expressly agree to the terms contained herein.

You consent and agree that your use of a keypad, mouse or other device to select an item, button, icon, checkbox, to enter text, or to perform a similar act/action, while using our sites, for the purpose of accessing or making any transactions regarding any agreement, acknowledgment, consent, terms, disclosures or conditions, constitutes your signature, including without limitation of the United States Electronic Signatures in Global and National Commerce Act, P.L. 106-229 (the "E-Sign Act") acceptance and agreement as if actually signed by you in writing. Be advised that all activity and IP address information may be monitored. The right to use any product or service you purchase from us is personal to you and is not transferable to any other person or entity.

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The Company reserves the right to make changes to the sites, policies, and to this Agreement at any time and without notice. YOU SHOULD PRINT A COPY OF THIS AGREEMENT AND CHECK BACK FREQUENTLY FOR UPDATES. Your continued use of our sites or of any purchased product or service following any future amendment constitutes your acceptance of any modified terms. If you have any questions regarding these terms, please contact customer care at daniel@getmyformula.com.

SITE CONTENT AND CONTENT RIGHTS

For purposes of these Terms: (i) "Content" means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Services or sites; and (ii) "User Content" means any Content that Account holders (including you) provide to be made available through the Services or sites. Content includes without limitation User Content. Any information submitted on the site is subject to the terms of which are incorporated herein.

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Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration hearing shall take place in the Southern District of New York, before a single arbitrator. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

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FORMULA™

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CONTACT

1 (646) 647-3599

HELLO@FINDMYFORMULA.COM (<https://web.archive.org/web/20210622045132/mailto:hello@findmyformula.com>)

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VISA



EXHIBIT “B”

Medical Disclaimer

Disclaimer

PLEASE READ CAREFULLY

In order to participate in Outliers' nootropics system, you must be at least 18 years of age and agree to the following Terms and Conditions.

OUTLIERS DOES NOT PROVIDE MEDICAL ADVICE. IF AT ANY TIME YOU EXPERIENCE A MEDICAL EMERGENCY, GO TO YOUR NEAREST EMERGENCY DEPARTMENT OR CALL 911 IMMEDIATELY. DO NOT RELY ON THE PRODUCTS OR OUTLIERS TO TREAT OR DIAGNOSIS ANY EMERGENCY OR NON-EMERGENCY MEDICAL OR PSYCHIATRIC CONDITION.

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10/24/24, 5:26 PM

Medical Disclaimer - Find My Formula

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1 (646) 647-3599**HELLO@FINDMYFORMULA.COM** (<https://web.archive.org/web/20210725020525/mailto:hello@findmyformula.com>)**902 Broadway Floor 6****New York, NY 10010**

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EXHIBIT “C”

Order #61543 is on the way

Follow it

FORMULA



Good news!

We've got some good news! All of the items from your order #61543 have been shipped.



Formula Starter Kit - Subscription - Ener
Logic, Motivation
Quantity: 1

Shipment Details

They are being shipped via USPS to the following address below.
The tracking number for these items is 9400111108400830619552. Use the
number to see the status of your shipment.

Joann Ledoux
1705 Dock Street
#148
Tacoma, Washington 98402
United States

TRACK PACKAGE

Please allow some time for the status of the shipment to come
up for the above address. You will receive a confirmation email when
your order has been shipped. Thanks again for your order.

FIND YOUR FORMULA

SCIENCE



Orders: All locations

Today

Total orders
0

Ordered items over time
0

Returns
0

Fulfilled orders over time
0

Delivered orders over time
0

Time to fulfill
0 min

All Unfulfilled Unpaid Open Archived Incorrect Orders Shipped Thesis Daily Formula Daily Mart Discount Code +

Item	Date	Customer	Archived	Incorrect	Orders	Shipped	Thesis	Daily	Formula	Daily	Mart	Discount	Code	+	Delivery	Status	Delivery	Method	Days
#147057	Sep 30, 2021	Joann Ledoux				\$79.00	● Paid		○ Unfulfilled		1 item								Formula Recharge Recurring Order Subscription
#137284	Sep 2, 2021	Joann Ledoux				\$79.00	● Paid		○ Unfulfilled		1 item								Formula Recharge Recurring Order Subscription
#125696	Aug 5, 2021	Joann Ledoux				\$79.00	● Paid		○ Unfulfilled		1 item								Formula Recharge Recurring Order Subscription
#112437	Jul 8, 2021	Joann Ledoux				\$79.00	● Paid		○ Unfulfilled		1 item								Formula Recharge Recurring Order Subscription
#98151	Jun 10, 2021	Joann Ledoux				\$79.00	● Paid		○ Unfulfilled		1 item								Formula Recharge Recurring Order Subscription
#80116	May 13, 2021	Joann Ledoux				\$79.00	● Paid		○ Unfulfilled		1 item								Formula Recharge Recurring Order Subscription
#72919	Apr 15, 2021	Joann Ledoux				\$79.00	● Paid		○ Unfulfilled		1 item								Formula Recharge Recurring Order Subscription
#61543	Mar 18, 2021	Joann Ledoux				\$79.00	● Paid		○ Unfulfilled		1 item								Formula Recharge Recurring Order Subscription

Learn more about [Google](#)

← Joann Ledoux

Tacoma, WA, United States • Customer for over 3 years

All time	Amount spent	Orders	Customer
	\$632.00	8	

Contact information

jo_ledoux@hotmail.com

Will receive notifications in English

Default address

Joann Ledoux
1705 Dock Street
#148
Tacoma Washington 98402
United States
1234567890

Marketing

- ☐ Email not subscribed
- ☐ SMS not subscribed

Tax settings

Collect tax

Store credit

No store credit

Tags

inactive Subscriber ✕

Notes

No notes

Last order placed

#147057	● Paid	○ Unfulfilled	\$79.00
September 30, 2021 at 1:51 am from Recharge Subscriptions (via report)			
	Formula Starter Kit - Subscription	x 1	\$79.00
Energy, Clarity, Logic, Motivation			

View all orders

Create order

Timeline

Leave a comment

@ #

Only you and other staff can see comments

Today

- You sent a shipping confirmation email for order #61543 to yourself (katy@takethesis.com) Just now
View email
- You sent an order confirmation email for order #61543 to yourself (katy@takethesis.com) Just now
View email

September 30, 2021

- This customer placed order #147057 on Recharge Subscriptions 1:51 AM

September 2, 2021

- This customer placed order #137264 on Recharge Subscriptions 1:22 AM

August 5, 2021

- This customer placed order #125696 on Recharge Subscriptions. 1:18 AM

July 8, 2021

- This customer placed order #112437 on Recharge Subscriptions 1:06 AM

June 10, 2021

- This customer placed order #98151 on Recharge Subscriptions 1:19 AM

May 13, 2021

- This customer placed order #86116 on Recharge Subscriptions 1:07 AM

Will receive notifications in English

Last order placed

#147057 • Paid • Unfulfilled \$79.00
 September 30, 2021 at 1:51 am from Recharge Subscriptions (via mobile)

 **Formula Starter Kit - Subscription** x 1 \$79.00
 Energy, Clarity, Logic, Motivation

[View all orders](#)[Create order](#)

Default address

Joann Ledoux
 1705 Dock Street
 #148
 Tacoma Washington 98402
 United States
 1234567890

Marketing

- ☐ Email not subscribed
☐ SMS not subscribed


Tax settings

Collect tax

Store credit

No store credit

Timeline

 Leave a comment

Reply

Only you and other staff can see comments

September 30, 2021

-  This customer placed order #147057 on Recharge Subscriptions 1:51 AM

September 2, 2021

-  This customer placed order #137264 on Recharge Subscriptions 1:22 AM

August 5, 2021

-  This customer placed order #125696 on Recharge Subscriptions 1:18 AM

July 8, 2021

-  This customer placed order #112437 on Recharge Subscriptions 1:06 AM

June 10, 2021

-  This customer placed order #98151 on Recharge Subscriptions. 1:19 AM


May 13, 2021

-  This customer placed order #86116 on Recharge Subscriptions. 1:07 AM

April 15, 2021

-  This customer placed order #72919 on Recharge Subscriptions. 1:28 AM



March 18, 2021

-  ShipStation sent a shipping confirmation email for order #61543 to this customer (jo_ledoux@hotmail.com) 1:16 PM

[View email](#)

-  CartHook Checkout sent an order confirmation email for order #61543 to this customer (jo_ledoux@hotmail.com) 3:09 AM

[View email](#)

-  This customer placed order #61543 on CartHook Checkout 3:09 AM
-  CartHook Checkout created this customer 3:09 AM


Tags

Inactive Subscriber X

Notes

No notes.

Order #61543 confirmed > Inbox x

 **Formula** <store+22758943@t.shopifyemail.com>
to me ▾

ORDER #61543

Thank you for your purchase!

Hi Joann, we're getting your order ready to be shipped. We will notify you when it has been sent.